89-746

No. _____

Supreme Court, U.S.
FILED
OCT 11 1989
JOSEPH F. SPANIOL, JR.
CLERK

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1989

GENE R. SMITH CORPORATION,

Petitioner,

v.

TERRY'S TRACTOR, INC., a California corporation; GEORGE LARABEE, individually and doing business as L & L CONSTRUCTION AND L & L ELECTRIC; WALTER L. SCHWAAR, individually and doing business as THE LIGHT GALLERY,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL OF CALIFORNIA, FOURTH APPELLATE DISTRICT

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To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

QUESTION-PRESENTED

This case presents an issue in dispute among two United States Circuit Courts of Appeals regarding malicious prosecution and abuse of process:

Is a state barred from affording its citizens a remedy for abuse of process and the malicious prosecution of an involuntary bankruptcy case:

(a) where the bankruptcy court dismissed the bankruptcy case as improper; and

(b) where there is no indication that Congress intended to preempt state court remedies.

LIST OF THE PARTIES

The caption of the case in this Court contains the names of all parties. There are no parent companies, affiliates or non wholly-owned subsiduaries of the moving party.

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7 Witkin, Summary of California Procedure (3d Ed. 1985), Trial, section 87, page 87 16

OPINIONS BELOW

The opinion of the California Court of Appeal for the Fourth Appellate District is reprinted in the Appendix at Appendix 1.

The order of the Supreme Court of the State of California denying a Petition For Review is reprinted in the Appendix at Appendix 2.

JURISDICTION

The jurisdiction of this Court is invoked on the grounds that a conflict exists among the United States Circuit Courts of Appeals and, in reliance upon one of those conflicting decisions, the California Court of Appeal has held state law remedies are preempted by federal bankruptcy statutes.

The judgment to be reviewed is that of the California Court of Appeal, Fourth Appellate District, filed April 18, 1989. A

petition for review was denied by the California Supreme Court on July 13, 1989.

The statute conferring jurisdiction upon this Court to review the judgment is 28 U.S.C. section 1257(a).

CONSTITUTIONAL STATUTE INVOLVED

Seventh Amendment, United States Constitution:

> In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

11 U.S.C. section 303(i):

> If the court dismisses a petition under this section other than on consent of all petitioners and the debtor, and if the debtor does not waive the right to judgment under this subsection, the court may grant judgment--
>
> (1) against the petitioners and in favor of the debtor for
>
> (A) costs; or

(B) a reasonable attorney's fee; or

(2) against any petitioner that filed the petition in bad faith for-

(A) any damages proximately caused by such filing; or

(B) punitive damages.

STATEMENT OF THE CASE

1. The Involuntary Bankruptcy.

During 1984, Petitioner Gene R. Smith Corporation ("Smith") built several apartment buildings in San Diego County. (CT 44.) Respondents were subcontractors on some of Smith's sites during 1984. (CT 44,) A dispute developed over respondent Terry's Tractor, Inc.'s ("Tractor") claim for payment on a job site in Vista, California. On October 9, 1984, Tractor, as sole petitioning creditor, filed a petition placing Smith in an involuntary bankruptcy ("Involuntary Bankruptcy"). (CT 14-16.) Thereafter, George

Larabee and Walter L. Schwaar ("Schwaar") joined in the Involuntary Bankruptcy.

Smith appeared and moved to dismiss the Involuntary Bankruptcy on the grounds, inter alia, that only one creditor had filed the petition (not three as required by section 303 of the United States Bankruptcy Code) and that each of the respondents were ineligible to be petitioning or joining creditors because their claims were the subject of bona fide disputes.[1] (CT 44.) The bankruptcy court ruled that the bankruptcy petition was improperly filed, and dismissed the bankruptcy. (CT 72-73.) The bankruptcy court's judgment was affirmed on appeal.

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[1]After the bankruptcy was filed, Smith learned that Tractor was not a licensed contractor at all times of the work. This would bar any claim under state law. California Business And Professions Code, section 7031.

2. The State Court Action.

Smith filed this action in October, 1985 alleging that respondents willfully and maliciously filed and prosecuted the Involuntary Bankruptcy without probable cause. Smith seeks compensatory and punitive damages for respondents' conduct. (CT 1, 9-13.) The complaint also alleges a cause of action for abuse of process. (CT 9-13.)

On December 29, 1987, Schwaar moved for judgment on the pleadings on the grounds that: (1) each cause of action was preempted by federal law; and, (2) the state court has no subject matter jurisdiction over those claims. (CT 26-27.)

At a hearing on January 15, 1988, the Superior Court for the County of San Diego, North County Branch, the Honorable Jeffrey T. Miller presiding, granted Schwaar's motion and

dismissed Smith's Complaint, with prejudice. (CT 80-81.) On March 7, 1988, the court also entered a judgment against Smith, in favor of Schwaar. (CT 79.) Smith timely filed a notice of appeal to the California Court of Appeal, Fourth Appellate District, Division One. (CT 82-83.)

3. The Published Opinion Of The Court Of Appeal.

On April 18, 1989, the California Court of Appeal, in an opinion certified for publication, affirmed the decision of the trial court. Relying upon dicta in **Gonzales v. Parks**, 830 F.2d 1033 (9th Cir. 1987) (state court does not have jurisdiction to determine propriety of voluntary bankruptcy case while bankruptcy is pending), the Court of Appeal held that section 303(i)(2) of the United States Bankruptcy Code preempts all state court remedies for malicious prosecution and

abuse of process of an involuntary bankruptcy case. (Opinion p. 5) A copy of the opinion is attached as Appendix 1. On July 13, 1989 the California Supreme Court denied petitioner's petition for review. See Appendix 2.

ARGUMENT

Review of this case is necessary to settle an important question of law: Is the State of California barred from affording its citizens a remedy for the malicious prosecution of an involuntary bankruptcy case.

An involuntary bankruptcy case can have devastating impact upon the party wrongfully charged with bankruptcy. In this case, the complaint alleges damages in excess of $500,000 caused by the respondents' improper and malicious filing of the case. The bankruptcy court properly exercised its

jurisdiction, found the bankruptcy was improper, and dismissed the case. The bankruptcy court did not hear or consider any damages caused by the improper filing. This case was then filed to remedy the wrongful action. The trial court dismissed the complaint on the basis of preemption and the state Court of Appeal affirmed solely on the basis of the Ninth Circuit Court of Appeals decision of **Gonzales v. Parks**, 830 F.2d 1033 (9th Cir. 1987). This is inconsistent with the Third Circuit Court of Appeals' decision in **Paradise Hotel Corp. v. Bank of Nova Scotia**, 842 F.2d 47, 52 (3d Cir. 1988). Moreover, there is no indication of Congressional intent to preempt longstanding state law claims on the subject.

Petitioner respectfully submits that review by this Court should be granted.

I.

CONGRESS HAS NOT PREEMPTED STATE MALICIOUS PROSECUTION LAWS

This Court has emphasized the standard for determining when preemption occurs: the Congressional intent to preempt must be unmistakably clear.

> The principle to be derived from our decisions is that federal regulation of a field of commerce should not be deemed preemptive of state regulatory power in the absence of persuasive reasons -- either that the nature of the regulated subject matter permits no other conclusion, or that the Congress has unmistakably so ordained. (Citation omitted.)

Florida Lime & Avocado Growers v. Paul, 373 U.S. 132, 142, 10 L.Ed.2d 248, 257 (1963).

Applying **Gonzales**, the state court felt compelled to find that a state malicious prosecution cause of action could not be asserted following the dismissal of an

improper bankruptcy. The **Gonzales** court so held without any analysis of specific Congressional intent. In fact, at oral argument before the state Court of Appeal, respondents conceded that no such intent was discernible from the Legislative History. The **Gonzales** court pointed only to an alternative remedy provided by Congress in 11 U.S.C. §303(i)(2).

Prior to the 1978 enactment of 11 U.S.C. §303(i)(2), the only remedy for litigants was a state law claim for malicious prosecution when they successfully defended an involuntary bankruptcy. **In Re Shon**, 212 F. 797 (D.Mass. 1913).[2] Courts have uniformly held that an involuntary bankruptcy, insolvency, or receivership proceeding, which is a special

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[2]If a bond was posted in the bankruptcy case, the bankruptcy court could assess damages against the bond.

proceeding rather than a criminal prosecution or a civil action in the strict sense, may form the basis for a malicious prosecution action. Guthrie, **Action For Malicious Prosecution Based On Institution Of Involuntary Bankruptcy, Insolvency Or Receivership Proceeding**, 40 A.L.R.3d 296 (1986). There is nothing in the Congressional record or in the code itself to suggest that 11 U.S.C. §303(i)(2) was intended to do anything but supplement these remedies. In fact, this Court rejected the notion that the bankruptcy law preempts all state and local laws. **Midatlantic National Bank v. New Jersey Dept. of Environmental Protection**, 474 U.S. 494 (1986). Federal bankruptcy courts can and do leave issues of malicious prosecution to the state court. **In re Emerald City Records, Inc.**, 9 B.R. 319 (Bankr. N.D. Ga. 1981). In

Emerald City, the bankruptcy court remanded to the state court a claim for malicious prosecution of an involuntary bankruptcy case. The court held that it had concurrent jurisdiction to determine a damage claim under 11 U.S.C. §303(i)(2) and state law malicious prosecution claims, but felt the state court was the most appropriate forum to decide the case.

Similarly, in **Paradise Hotel**, 842 F.2d at 52, the court found that the remedy provided by Congress in 11 U.S.C. §303(i) was not exclusive:

> We agree that [11 U.S.C. §303(i)] was intended to permit a bankruptcy court to adjudicate claims in a Chapter 7 proceeding like those of Paradise. It does not require that all such claims be so adjudicated, however, and we know of no case which so holds. Moreover, we believe it would be inconsistent with the overall scheme of the Code to find that §303(i)(2) is an exclusive remedy for such claims.

The court below based preemption on the mere existence of a federal law on the same subject:

> [11 U.S.C. §303(i)(2)] reflects Congress' intent that the case by case development of law relating to "bad faith" in this context should be accomplished in federal courts and not in state courts.

(Opinion, p. 5.)

The respondents and the court below relied entirely upon **Gonzales v. Parks**, 830 F.2d 1033. **Gonzales**, however, is inapposite. In **Gonzales**, while the bankruptcy case was pending, a creditor filed a lawsuit for abuse of process in state court against the debtor and the debtor's attorney. A default judgment was entered by the state court and the debtor (and the debtor's counsel) sought to hold the plaintiff in violation of the bankruptcy's automatic stay. The **Gonzales** court ruled

that, while the case was pending, only the bankruptcy court had jurisdiction to determine whether the bankruptcy was properly filed, and a creditor could not collaterally attack the propriety of the bankruptcy filing in state court. The state court judgment was held void for lack of jurisdiction. Id. at 1035.

Admittedly, the Gonzales case contains dicta that broadly applies the exclusive jurisdiction of the bankruptcy court as an "implicit rejection" of state court remedies for abuse of process. However, in Gonzales, the bankruptcy case was pending when the state court lawsuit was filed and was an attempted collateral attack on the propriety of the bankruptcy in the state court. Here, the bankruptcy court rendered a final determination that the bankruptcy filing was improper. The bankruptcy was then dismissed.

This case does not interfere with or impede the bankruptcy court's exercise of its exclusive jurisdiction.

The only other court to consider Gonzales came to the same conclusion. In **Kensington Development Corp. v. Israel**, 142 Wis.2d 894, 419 N.W.2d 241 (1988), the Wisconsin Supreme Court held that state tort claims could be asserted once the bankruptcy court dismisses the case. Upon dismissal, there was no bankruptcy action to take federal supremacy and exclusivity.

II.

SECTION 303(i) SHOULD BE INTERPRETED TO AVOID A FINDING OF UNCONSTITUTIONALITY

If interpreted to preempt state malicious prosecution laws, 11 U.S.C. §303(i) would be unconstitutional because it denies the aggrieved party of its right to a trial by jury. In **Granfinanciera, S.A. v. Nordberg**,

___U.S.___, 57 U.S.L.W. 4898 (1989), the Court recognized that a party could not be deprived of a right to a jury trial under the Seventh Amendment. 11 U.S.C. §303(i) purports to vest in the bankruptcy judge (a non-article III judge) the power to render a judgment, including all damages and punitive damages for the filing of an involuntary bankruptcy in bad faith. At common law, the plaintiff in a malicious prosecution case, however, was entitled to a jury trial. 7 Witkin, Summary of California Procedure (3d Ed. 1985), Trial, section 87, page 87. The effect of the ruling in **Gonzales** is to require those who are wrongfully placed in involuntary bankruptcy to submit the question of their rights and damages to the bankruptcy judge. If, however, 11 U.S.C. §303(i) creates an additional, alternative statutory right to compensation,

the statute would not offend the Seventh Amendment.

CONCLUSION

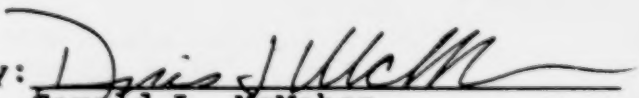
If allowed to stand, the decision of the California Court of Appeal establishes a standard of federal preemption that could bar state court remedies whenever federal laws exist. State causes of action which complement federal laws (e.g., antitrust, securities laws, wire and mail fraud, environmental protection) would all be preempted by the loose standard adopted by this decision.

More importantly, states have a strong interest in protecting their citizens from malicious prosecution of civil cases, whether such cases are filed in federal or state court. State malicious prosecution laws complement the goal of limiting baseless

litigation reflected by Rule 11 of the Federal Rules of Civil Procedure (in federal civil litigation) and Bankruptcy Code section 303(i)(2) in bankruptcy cases. Nothing suggests that Congress intended to restrict the longstanding remedies afforded by state laws in cases such as this one. Petitioner respectfully submits that the Court should act to settle this important question of law.

Dated: November 6, 1989.

SELTZER CAPLAN WILKINS & McMAHON

By: 

Gerald L. McMahon
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PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA)
)
COUNTY OF SAN DIEGO)

I, the undersigned, say: I am and was at all times herein mentioned, a citizen of the United States and a resident of the County of San Diego, over the age of eighteen (18) years and not a party to the within action or proceeding; that my business address is 3003-3043 Fourth Avenue, San Diego, California 92103; that on November 8, 1989, I served the within PETITION FOR WRIT OF CERTIORARI in said action or proceeding by depositing true copies thereof in a separate envelope for each addressee named hereafter, addressed to each addressee respectively as follows:

Clerk, U.S. Supreme Court 1 First Street, N.E. Washington, D.C. 20543	Original and 39 copies (via Federal Express)
Clerk, California Court of Appeal Fourth Appellate District 750 B Street, Suite 5000 San Diego, CA 92101	3 copies
Clerk of the San Diego Superior Court for the Honorable Jeffrey T. Miller 325 South Melrose Drive Vista, CA 92083	3 copies

Gregory W. Pollack, Esq. — 3 copies
McInnis, Fitzgerald, Rees,
Sharkey & McIntyre
1320 Columbia Street
San Diego, CA 92101

S. Myron Klarfled, Esq. — 3 copies
Klarfled & Maillian
10960 Wilshire Boulevard
Suite 510
Los Angeles, CA 92101

Shawn F. Kelly, Esq. — 3 copies
530 B Street, Suite 2001
San Diego, CA 92101

I then sealed the envelopes and placed them for mailing in accord with our business's practice on November 8, 1989.

I am readily familiar with our business's practice for collecting, processing and mailing correspondence and pleadings. Such correspondence and pleadings are deposited on the same day with the U.S. Postal Service in the ordinary course of business.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on November 8, 1989.

Lisa Sandoval

LISA SANDOVAL

APPENDIX

CERTIFIED FOR PUBLICATION

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

FILED:
April 18, 1989

GENE R. SMITH CORPORATION, Plaintiff and Appellant, v. TERRY'S TRACTOR, INC., et al., Defendants and Respondents.	D007928 (Super. Ct. No. N30755)

APPEAL from a judgment of the Superior Court of San Diego County, Jeffrey T. Miller, Judge. Affirmed.

Gerald L. McMahon, Dennis J. Wickham, Craig E. Courter and Seltzer, Caplan, Wilkins & McMahon for Plaintiff and Appellant.

APPENDIX 1

Gregory W. Pollack, McInnis, Fitzgerald, Rees, Sharkey & McIntyre and Shawn F. Kelly for Defendants and Respondents.

Plaintiff Gene R. Smith Corporation (Smith) appeals the judgment dismissing all defendants after the court ruled Smith's causes of action for abuse of process and malicious prosecution for the allegedly wrongful and malicious prosecution of an involuntary bankruptcy instituted by the defendants were preempted by federal law, depriving the trial court of subject matter jurisdiction. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Smith, a developer and builder, had commercial dealings with defendants, Terry's Tractor Inc., George Larabee doing business as L & L Construction and L & L Electric and

Walter L. Schwaar doing business as the Light Gallery. Allegedly Smith failed to pay Terry Tractor's bill for labor and material resulting in Tractor's petitioning under Chapter 11 to place Smith in involuntary bankruptcy. L & L and the Light Gallery as creditors joined in that proceeding. Smith successfully moved to dismiss the petition and then filed this action for malicious prosecution and abuse of process, alleging the defendants willfully and maliciously filed and prosecuted the involuntary bankruptcy. The Light Gallery successfully moved for judgment on the pleadings. The court dismissed the complaint as against all the defendants ruling that each cause of action was preempted by federal law and the state court had no subject matter jurisdiction over those claims.

DISCUSSION

To a great extent the outcome of this appeal hinges on our interpretation of Gonzales v. Parks (9th Cir. 1987) 830 F.2d 1033. Because Gonzales materially influenced the trial court's favorable ruling the defendants understandably urge that Gonzales is persuasive and should govern our analysis. Smith, on the other hand, vigorously argues Gonzales is factually and procedurally distinguishable from his case and in any event its broad language adversely affecting him is simply dicta. Even though there is some technical merit to Smith's assertion, we conclude Gonzales correctly states the considerations controlling our review and on the basis of those considerations we affirm the judgment.

Gonzales involved the following.

Gonzales involved the following.

Attorney Michael Dodge filed a Chapter 11 bankruptcy petition for his clients Richard and Juliana Gonzales. Apparently one purpose of the bankruptcy was to stay a foreclosure of the Gonzales' house by Barbara Parks. Pending the bankruptcy proceedings Parks sued the Gonzaleses and Dodge in state court alleging the debtors' filing of the voluntary bankruptcy was an abuse of process. Parks entered a default against the Gonzaleses and obtained a $10,000 default judgment against them. Later Dodge and the Gonzaleses filed an adversary proceeding in the bankruptcy court against Parks and her counsel, Jerome Parks, seeking relief from the state court action. The bankruptcy court declared the state court judgment void as violating the automatic stay provisions of the bankruptcy

act, vacated the judgment and awarded fees to the bankrupt and to their counsel. On appeal, the district court affirmed the bankruptcy's court judgment and fee award also awarding sanctions against Parks' counsel. Except as to the sanctions, the Ninth Circuit affirmed emphasizing the federal courts exclusive jurisdiction over bankruptcy proceedings.

"Filings of bankruptcy petitions are a matter of exclusive federal jurisdiction. State courts are not authorized to determine whether a person's claim for relief under a federal law, in a federal court, and within that court's exclusive jurisdiction, is an appropriate one. Such an exercise of authority would be inconsistent with and subvert the exclusive jurisdiction of the federal courts by allowing state courts to create their own standards as to when persons may properly seek relief in cases Congress has specifically precluded those courts from adjudicating." (Gonzales at p. 1035; fn. omitted.)

Smith points out that there is a significant procedural difference between Gonzales and the case before us stressing that

in Gonzales, unlike the facts here, the bankruptcy case was pending at the time the state court action was filed. While we agree with Smith's observation that a case must be interpreted in the context in which it was decided, we cannot overlook Gonzales' broad - and we believe correct - policy statements.

"That Congress' grant to the federal courts of exclusive jurisdiction over bankruptcy petitions precludes collateral attacks on such petitions in state courts is supported by the fact that remedies have been made available in the federal courts to creditors who believe that a filing is frivolous. Debtors filing bankruptcy petitions are subject to a requirement of good faith, [citation] and violations of that requirement can result in the imposition of sanctions, . . . 11 U.S.C.A. §303(i)(2) (Supp. 1987) (authorizing the imposition of sanctions on petitions for involuntary bankruptcy petitions filed in bad faith). Congress' authorization of certain sanctions for the filing of frivolous bankruptcy petitions should be read as an implicit rejection of other penalties, including the kind of substantial damage awards that might be available in state court tort suits. Even the mere possibility of being sued in tort in state court could in some instances deter persons from exercising their rights in

bankruptcy. In any event, it is for Congress and the federal courts, not the state courts, to decide what incentives and penalties are appropriate for use in connection with the bankruptcy process and when those incentives or penalties shall be utilized." (Gonzales at pp. 1035-1036; emphasis added.)

We agree with the foregoing even if those comments are properly described as dicta.

11 United States Code section 303(i) permits the bankruptcy court on dismissal of a petition to award a debtor costs, reasonable attorney's fees and any damages proximately caused by the taking of the debtor's property. If the involuntary petition is filed in bad faith the bankruptcy court has the additional power to award damages proximately caused by such filing and punitive damages.

This provision reflects Congress' intent that the case by case development of law relating to "bad faith" in this context should be accomplished in federal courts and not in

state courts. The parties make no effort to distinguish the difference, if any, between conduct constituting "bad faith" and "malicious prosecution" treating both as virtually identical. On that asumption, it would indeed be anomalous, and to say the least, inconsistent with this legislative intent, for state courts to develop a different, more liberal definition of "bad faith" for malicious prosecution purposes than that developed in the federal system. Different standards defining identical conduct adds an unnecessary and confusing component to the uniform law to be applied in bankruptcy proceedings. The additional risk that substantial damage awards in state courts would create a material disincentive to those seeking to use the bankruptcy laws only exacerbates the problem. The determination

of damages in state courts should not determine the potential cost of entry into the federal bankruptcy system.

Smith's description of the injustice inflicted on a debtor improperly and maliciously placed in involuntary bankruptcy who wishes to seek appropriate sanctions from those responsible for doing so is certainly of concern. Smith explains the only way the aggrieved debtor will be able to obtain redress in such circumstances will be to remain in bankruptcy which involves further harm to a party's ability to obtain credit, enter into contracts or to run its business.

In addition to our unwillingness to accept Smith's factual predicate which requires us to accept the adverse consequences of a bankruptcy pending for the sole purpose of awarding the debtor damages for the

wrongful filing of an involuntary bankruptcy petition, we disagree with Smith's legal predicate. The bankruptcy court can dismiss the involuntary bankruptcy petition eliminating the potential harm which Smith describes retaining jurisdiction for the sole purpose of awarding costs, attorney's fees and damages. (In re Godroy Wholesale Co., Inc. (D. Mass. 1984) 37 Bankr. 496, 498.)

Smith correctly observes that limiting his remedy to the bankruptcy forum deprives him of a jury trial, but interestingly does not accompany his claim of unconstitutionality with any authority. We believe his omission is significant for a number of reasons. The most basic is our assumption that if there were such authority he would have directed us to it. Also omitted in Smith's conclusionary argument is whether he is relying on the

United States or California Constitutions. We assume his argument rests on the former since a federal statute can be invalidated only on Federal and not on state constitutional grounds. In effect Smith challenges the constitutionality of 11 United States Code section 303(i), a virtually impossible argument to make since there is no constitutional right to a jury in matters which arise in bankruptcy even if there is a right to a jury if those same matters were litigated outside bankruptcy. (See e.g. Katchen v. Landy (1966) 382 U.S. 323, 336-337.) The right to a jury has never been interpreted in a rigid manner.

"[M]any procedural devices developed since 1791 that have diminshed the civil jury's historic domain have been found not to be inconsistent with the Seventh Amendment. See Galloway v. United States, 319 U.S. 372, 388-393 (directed verdict does not violate the Seventh Amendment); Gasoline Products Co. v. Champlin Refining Co., 283 U.S. 494, 497-498

(retrial limited to question of damages does not violate the Seventh Amendment even though there was no practice at common law for setting aside a verdict in part); Fidelity & Deposit Co. v. United States, 187 U.S. 315, 319-321 (summary judgment does not violate the Seventh Amendment)." (Parklane Hosiery Co. v. Shore (1979) 439 U.S. 322, 336.)

DISPOSITION

The judgment is affirmed. [1]

CERTIFIED FOR PUBLICATION

s/s
WIENER, J.

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[1] Our disposition reflects our rejection of Smith's argument that the court erred in entering judgment after granting the Light Gallery's motion for judgment on the pleadings and his request that we vacate the judgment. The entry of a judgment implementing a court's order occurs routinely for a number of valid reasons. Smith's implicit quarrel with the judgment here is that it removes all the defendants when only a single defendant brought the motion. Although in certain circumstances the trial court's broad sweep might be improper we conclude the action here was a prudent and economical use of judicial resources. Lacking subject matter jurisdiction over one defendant the court lacked subject matter jurisdiction over all.

WE CONCUR:

s/s
KREMER, P.J.

s/s
HUFFMAN, J.

O R D E R D E N Y I N G R E V I E W

AFTER JUDGMENT BY THE COURT OF APPEAL
Fourth Appellate District,
Division One, No. D007928
S010453

IN THE SUPREME COURT OF
THE STATE OF CALIFORNIA

IN BANK

GENE R. SMITH CORPORATION,
Appellant

v.

TERRY'S TRACTOR INCORPORATED Et Al.,
Respondents

Appellant's petition for review DENIED.

SUPREME COURT
FILED
JULY 13, 1989

Robert Wandruff
Clerk

s/s
Acting Chief Justice

APPENDIX 2